

ZONING BOARD OF APPEALS
MEETING MINUTES
January 13, 2009
4:00 P.M.

CALL TO ORDER: Mr. Greg Dunn, Vice Chairperson called meeting to order at 4:00 p.m.

ATTENDANCE:

Members Present: Rick Barnes, Greg Dunn, Mike Fatt, Gentry Hammons, James Moreno, and John Stetler

Members Excused: Deland Davis & Carlyle Sims

Staff Present: Glenn Perian, Senior Planner; and Leona Parrish, Admin. Assistant; Planning Dept.

ADDITIONS OR DELETIONS TO THE AGENDA: None

OLD BUSINESS: None

NEW BUSINESS:

Appeal # Z-01-09:

Mr. Glenn Perian stated this was an appeal from Mr. James M. Belcher, 3940 S. Minges Rd., requesting a variance to allow construction of a 1,440 sq. ft. detached accessory building in an R-1R "Single Family Rural Residential District". He stated that according to Chapter 1230.06 (28) of the Planning and Zoning Code the accessory building would be exceeding the size limitation of 1,000 sq. ft.

Mr. Jim Belcher, 3940 S. Minges Road came forward to speak and stated he was totally at fault and thought the permit had been issued as they received the receipt in the mail one week later after his wife submitted the application to the inspections department. Said he had started the work and was 80% done when Mr. Frank Ballard, Building Inspector came and told him the building was too large according to the City Ordinance. Noted they also have a 20 x 24 barn and a two car garage on his property which is currently full. That he would be using the new building for storage and does wood working on the side, that it was his fault by moving ahead with construction without having the permit.

Mr. Gentry Hammons asked how hard it would be to reduce the size to 720 sq. ft. and then build another structure the same size to equal the 1,440 sq. ft. they want.

Mr. Belcher stated the building is already built and he had cemented 4 x 6 posts, it would be a major construction to reduce the size and would not work for them for their use purposes; they built what they could afford.

Mr. Rick Barnes said they could build numerous buildings 10 feet from each other without needing a variance.

Mr. Belcher said financially they could not build more structures and would prefer to keep the new 1,440 sq. ft. structure they built; said they enjoy viewing the wildlife etc.; with more buildings it would not look good.

Mr. Moreno asked if when they submitted the building permit, was plans submitted also with the square footage noted. Mr. Belcher stated, yes his wife came to him to add a drawing to the permit as required and then submitted it to Inspections, with the square footage.

Mr. Moreno asked if the permit specifically stated it was for 1,440 square feet. Mr. Belcher stated he would not say he noted the 1,440 square feet, but did give the actual dimensions of the addition.

Mr. Mike Fatt asked Glenn Perian if in the Inspections department regarding the act of applying for the permit; if getting the receipt and the actual review are separate activities.

Mr. Glenn Perian stated yes, he understands that someone would submit a permit application and pay; a review would be done, then if it complies with all building and zoning codes the permit would then be issued.

Mr. James Moreno stated if the dimensions were specified on the permit application, the math would show it would be larger than what is allowed, therefore the permit would not be issued.

Mr. Mike Fatt stated it was his impression that Mr. Belcher did not receive the permit, that he had only received the receipt for the application. Mr. Belcher said he thought the receipt was the permit and they were not trying to cheat the city.

Mr. Greg Dunn asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. JIM MORENO MADE A MOTION TO APPROVE # Z-01-09 VARIANCE TO ALLOW CONSTRUCTION OF A 1,440 SQ. FT. DETACHED ACCESSORY BUILDING IN AN R-1R "SINGLE FAMILY RURAL RESIDENTIAL DISTRICT" FOR PROPERTY LOCATED AT 3940 S. MINGES ROAD, SUPPORTED BY MR. GENTRY HAMMONS.

Discussion:

Mr. John Stetler asked Mr. Glenn Perian if it was within a 12 month period that the City Commission might be reviewing the ordinance for a change in the allowable size for accessory buildings.

Mr. Glenn Perian stated he would not want to state a timeframe, but the City Attorney's office would need to draft something that might be acceptable to the City Commission for an amendment to the code.

Mr. John Stetler said he does not see it as acceptable for approval as it does not meet their criteria. Said if the ordinance was to be reviewed and changed in 12 months, it would then be acceptable. He would hate to see the building be torn down or partially removed and then later have the City Commission approve larger accessory buildings to be built.

Mr. Greg Dunn asked if the building was completely built. Mr. Belcher stated, yes.

Mr. Gentry Hammons asked Mr. Belcher if he had the receipt for the permit, and never received the permit. Mr. Belcher stated yes he had the receipt, but did not have the permit.

Mr. Greg Dunn stated it is difficult as it has been completed and does elevate the level of hardship or practical difficulty in his mind for removing the structure and would not normally approve if it had not already been built. Said there has to be hardship or practical difficulty, but it is supposed to be because of the topography of the property or something to do with the property itself, not necessarily because of the desire of the owner for storage. He understands the ordinance regarding the rural areas of the city the allowable size needs to be increased and that he is torn between approving and setting precedent for others.

Mr. Mike Fatt stated there is an additional complication as point #3 says "in no case should a variance be granted if it is determined by the board that the applicant has created the hardship". Said this is a self created hardship.

Mr. John Stetler stated he would like to propose an Amendment to the Motion to approve the variance for one-year time period to allow the City Commission to amend the ordinance to allow larger accessory buildings. Mr. Belcher would come back or after a year and the variance would then expire if denied by the City Commission.

Mr. Gentry Hammons asked if the City Commission does not amend the ordinance, what happens then.

Mr. John Stetler said he would then need to come back before the Zoning Board or comply with the ordinance.

AMENDED MOTION: MR. JOHN STETLER PROPOSED AN AMENDMENT TO THE MOTION TO APPROVE # Z-01-09 VARIANCE TO ALLOW 1,440 SQ. FT. DETACHED ACCESSORY BUILDING IN AN "R-1R SINGLE FAMILY RURAL RESIDENTIAL DISTRICT" FOR PROPERTY LOCATED AT 3940 S. MINGES ROAD IN ORDER TO ALLOW THE CITY COMMISSION TO AMEND THE ORDINANCE TO INCREASE THE ALLOWED SQUARE FOOTAGE; IF DENIED BY CITY COMMISSION THIS VARIANCE WOULD EXPIRE AFTER ONE YEAR AND THEY WOULD NEED TO EITHER COME BEFORE THE ZONING BOARD OR COMPLY WITH THE ORDINANCE; SUPPORTED BY MR. GENTRY HAMMONS.

MR. GREG DUNN ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN ON THE AMENDED MOTION FOR THE VARIANCE; FIVE (DUNN, HAMMONS, MORENO, STETLER, AND BARNES) IN FAVOR; ONE (FATT) OPPOSED: AMENDED MOTION APPROVED.

MR. GREG DUNN ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN ON THE MOTION FOR THE VARIANCE AS AMENDED; FIVE (DUNN, HAMMONS, MORENO, STETLER, AND BARNES) IN FAVOR; ONE (FATT) OPPOSED: MOTION APPROVED.

Mr. Greg Dunn stated to Mr. Belcher that the appeal has been granted for a one-year period and hopefully within that year the City Commission will review the ordinance to make it possible for those within an "R-1R" district to have larger accessory buildings than what is currently allowed at 1,000 sq. ft. If it does not occur this appeal will expire one-year from today, before at that time Mr. Belcher

would need to approach the City Planning Department in order to make a determination of whether they need another variance or if it is in compliance with any new ordinance changes; if failed to do so the structure would be out of compliance.

Mr. Glenn Perian stated he would contact the Building Inspector to see what would need to be done to get the building inspected. Mr. Perian told Mr. Belcher to contact him regarding information needed.

Appeal # Z-02-09:

Mr. Glenn Perian stated this was an appeal from Family Health Center of Battle Creek, 181 W. Emmett Street requesting a variance to allow a 15 ft. front-yard setback in stead of the required 20 ft. front-yard setback, in order to construct a new Dental Clinic addition for property located in a "C-2 General Business District" at 181 W. Emmett Street.

Dr. A.J. Jones, President & CEO, Family Health Center of Battle Creek, 181 W. Emmett Street was present to speak regarding the variance request to build the new Dental Clinic closer to the front-yard setback than allowed by (5 foot) on W. Emmett Street. Said the reason they need the variance is due to the design of the facility, which is unique as it is very open which would allow to visually see all patients at one time. They will have a total of 20 dental areas, with 10 dental areas on first floor, and an additional 10 on the second floor. (Provided a larger map of the new construction in how it sets in relation to Emmett Street.)

Mr. Jon Rambow, 521 S. Riverview Dr., Kalamazoo, MI, 49004, Slocum Architects stated apart of the problem is that they have completely filled the building with the needs that they currently have. The new Dental Clinic addition is an open room area and if setback is not approved, it would change the design. Noted the utilities run along the abandoned street and limits the buildable space.

Mr. Greg Dunn asked if the design was changed would it decrease in size. Mr. Rambow stated the side abandoned street is still needed for utilities. That the funding received is from State and Federal for this construction; they would have to abide by their regulations and guidelines in order to build. Said the corner is not a 90° angle, which causes a problem.

Mr. Mike Fatt asked if the setback was from the center of the street. Mr. Rambow stated no it is from the property line.

Mr. John Stetler asked if the utilities were moved, could they build. Answer, no as it would eliminate their parking, said every square foot is used.

Mr. Greg Dunn noted that the Family Health Center had purchased many of the surrounding properties to accommodate for the parking. Dr. Jones said they are still trying to purchase one other property.

Mr. Mike Fatt asked what the setback was from the sidewalk or curb. Mr. Rambow stated if approved they would be 15 ft. from the property line, with 10 -12 feet green space between street and sidewalk.

Mr. John Stetler asked if they had a survey. Mr. Rambow stated they had requested another survey and would be getting the report very soon. Said it is possible that they could be farther away like 17 ft.

Mr. Greg Dunn stated if this variance was approved for the 15 ft. it would be another year before they could request a change to allow the building to be closer than the 15 ft. requested.

Mr. Glenn Perian stated a letter was received from a Ms. Doris M. Collins, 47 Grant St, who is a nearby property owner with concerns of how it would change Grant Street and if there would be parking near her home and/or an increase in traffic.

Dr. Jones stated the parking will be on Emmett Street and that the employee parking would be on Grant Street with its entrance on Emmett Street. Said they have wonderful neighbors and have a great relationship; they do not intend to change Grant Street, so it should not impact them in any way.

Mr. Rick Barnes asked if the parking would then be west of the new structure. Dr. Jones stated yes, it would be west and east off Emmett Street. They do not want traffic to be cutting through the parking lot, therefore would not be putting an entrance or exit off Grant Street.

Ms. Doris Collins, 34 Grant Street came forward to speak and stated her concerns have been addressed and did not have a problem with the new addition to be built.

Mr. Greg Dunn asked if there were any others here to speak for or against this variance, seeing none he called this public hearing to a close and would entertain a motion.

MOTION: MR. JAMES MORENO MADE A MOTION TO APPROVE # Z-02-09 VARIANCE TO WAIVE THE 20 FT. FRONT-YARD SETBACK TO CONSTRUCT A NEW DENTAL CLINIC WITH A 15 FT. FRONT-YARD SETBACK FOR PROPERTY IN AN "C-2 GENERAL BUSINESS DISTRICT" FOR PROPERTY LOCATED AT 181 W. EMMETT STREET, SUPPORTED BY MR. GENTRY HAMMONS.

Discussion:

Mr. John Stetler stated he feels it would be a hardship if denied and that it meets the criteria and is not self created as they have the State and Federal rules to follow, said he would be in favor.

Mr. Mike Fatt stated he had no problem with the application, but his only concern is visibility and traffic.

Mr. Greg Dunn stated he sees a hardship and practical difficulty with the street being in an angle and the building being square causes a problem. He said there is a need in the community for this new Dental Clinic and that he would be in favor.

MR. GREG DUNN ASKED FOR ANY ADDITIONAL COMMENTS, BEING NONE A VOTE WAS TAKEN ON THE MOTION FOR THE VARIANCE TO ALLOW A FRONT YARD SETBACK TO BE 15 FEET; ALL IN FAVOR; NONE OPPOSED: MOTION APPROVED.

APPROVAL OF MINUTES:

MOTION WAS MADE BY MR. JAMES MORENO TO APPROVE THE DECEMBER 9, 2008 ZONING BOARD OF APPEALS MINUTES AS SUBMITTED, SUPPORTED BY MR. MIKE FATT. ALL IN FAVOR, NONE OPPOSED, MOTION CARRIED - APPROVED.

COMMENTS BY THE PUBLIC: None

COMMENTS BY THE MEMBERS / STAFF:

Mr. Glenn Perian noted that new officers would be elected for year 2009, at the next Zoning Board meeting.

Mr. Perian stated regarding appeal #Z-01-08; He would have the City Attorney's Office review the Ordinance for "Chapter 1230" regarding the allowable size for accessory buildings.

Mr. Greg Dunn stated he was glad to see Mr. Stetler attend the meeting today and see he was doing well following his surgery.

ADJOURNMENT: Motion made by Mr. John Stetler to adjourn the meeting, second by Mr. Mike Fatt; all in favor meeting adjourned at 4:50 p.m.

Submitted by: Leona A. Parrish
Administrative Assistant, Planning Department